

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

**FILED**

JUL 20 2012

DAVID CREWS, CLERK  
BY  Deputy

BONNIE JONES, as Next Friend of  
JOHNNY MONTGOMERY, JOHNNY MONTGOMERY,  
Individually, and MARTHA MONTGOMERY,  
Wife of JOHNNY MONTGOMERY

PLAINTIFFS

VERSUS

CIVIL ACTION NO: 1:12CV163-MS  
Jury Demand

WAL-MART STORES, INC.

DEFENDANTS

**C O M P L A I N T**

COME NOW the Plaintiffs, Bonnie Jones, as next friend of Johnny Montgomery, Johnny Montgomery, individually, and Martha Montgomery, and file this their Complaint against Defendant Wal-Mart Stores, Inc. and would show unto the Court as follows:

**PARTIES**

1. The Plaintiff, Bonnie Jones, as next friend of Johnny Montgomery, is the daughter of Johnny Montgomery, and is a plaintiff herein by way of authority granted to her by power of attorney executed by Johnny Montgomery. She is an adult resident citizen of Tippah County, Mississippi.

2. The Plaintiff, Johnny Montgomery, is an adult resident citizen of Tippah County, Mississippi and received injuries and damages as a result of the negligence of Defendant Wal-Mart Stores, Inc. ("Wal-Mart") and/or its employees.

3. The Plaintiff, Martha Montgomery, is an adult resident citizen of Tippah County, Mississippi, and wife of Plaintiff, Johnny Montgomery, and sustained damages in the form of loss of consortium as a result of the negligence of Defendant Wal-Mart and/or its employees.

4. Wal-Mart Stores, Inc. is a foreign corporation registered to do business in the State of Mississippi and may be served with process upon its registered agent, C.T. Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, MS 39232.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to Title 28 U.S.C. §1332(a)(1) and venue is appropriate pursuant to Title 28 U.S.C. §1391(a)(2) inasmuch as the acts and omissions of negligence alleged herein occurred in Alcorn County, Mississippi, within the Northern District of Mississippi, Eastern Division, and Plaintiffs seek damages in excess of \$75,000.00, the jurisdictional minimum of this Court.

6. Defendant has been provided notice of Plaintiffs' claims pursuant to Miss. Code Ann. §15-1-36(15).

7. Attached as Exhibit "A" is a Certificate of Consultation, executed by the undersigned which satisfies the requirements of Miss. Code Ann. §11-1-58.

8. Plaintiffs have satisfied all statutory and procedural requirements and are authorized to bring this civil action.

#### **FACTS**

9. On or about December 13, 2010, Plaintiff Johnny Montgomery's physician, Dr. Tim Thompson, telephoned a prescription for Mr. Montgomery to Wal-Mart Pharmacy 10-0105 within the Wal-Mart Super Center located at 2301 South Harper Road, Corinth, MS 38834. The prescription was for thirty (30), 1 mg. tablets of Haloperidol with five (5) refills.

10. On about July 13, 2011, Mr. Montgomery's Haloperidol prescription refill was misfilled in 10 mg. form rather than the 1 mg. dosage prescribed by his physician.

11. On or about August 9, 2011, the prescription was misfilled again in the same manner.

12. As a result of these negligent acts by Wal-Mart agents and/or employees, Mr. Montgomery unknowingly ingested 10 times his prescribed dosage of Haloperidol for a period of approximately six (6) weeks. As a direct and proximate result of the negligence, Mr. Montgomery became extremely lethargic and became unable to perform even the most basic daily tasks. He was hospitalized from August 23, 2011, through September 7, 2011. He has been unable to return to his condition prior to the negligence and has required and incurred additional hospice, home health care, and physician care since the negligence.

13. Plaintiff, Martha Montgomery, has incurred damages in the form of loss of consortium due to Mr. Montgomery's worsened state of health.

14. Plaintiff, Johnny Montgomery, alleges damages in the form of pain and suffering, medical, rehab and home health related expenses, loss of enjoyment of life, and mental and emotional anguish.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs demand judgment of and from the Defendant in an amount to be determined by a jury in excess of the minimum jurisdictional limits of this Court, plus prejudgment interest and costs of Court.

Plaintiffs respectfully request a trial by jury on all issues so triable.

Respectfully submitted,

MERKEL & COCKE, P.A.  
Post Office Box 1388  
Clarksdale, MS 38614  
(662) 627-9641  
Attorneys for Plaintiffs

By: 

CHARLES M. MERKEL, III (MSB#99207)

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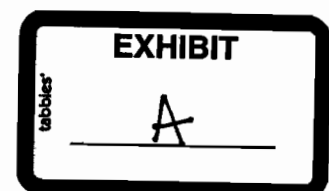
DEFENDANTS

**CERTIFICATE OF EXPERT CONSULTATION**

STATE OF MISSISSIPPI  
COUNTY OF COAHOMA

COMES NOW Charles M. Merkel, III, and states the following:

1. I am attorney of record for Plaintiffs in the above-entitled action.
2. In my capacity as attorney of record I attempted to make a thorough and complete review of all relevant facts and circumstances involved in this matter. I reviewed the facts of the case.
3. I have consulted with at least one (1) expert qualified pursuant to the Mississippi Rules of Civil Procedure, and the Mississippi Rules of Evidence and the Federal Rules of Civil Procedure and Federal Rules of Evidence who is qualified to give expert testimony as to the standard of care or negligence of Defendant in this matter.
4. I reasonably believe that the expert I have consulted in this matter is knowledgeable in the relevant issues involved in the particular action.
5. I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of such action.



FURTHER, Affiant sayeth not.

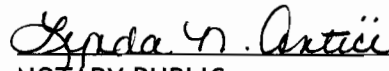


CHARLES M. MERKEL, III (MSB#99207)

STATE OF MISSISSIPPI       }  
COUNTY OF COAHOMA       }

PERSONALLY appeared CHARLES M. MERKEL, III, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

This, the 18<sup>th</sup> day of July, 2012.

  
NOTARY PUBLIC

My Commission Expires:

